

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20544**

In the Matter of

Petition of Telcordia Technologies Inc. to Reform
or Strike Amendment 70, to Institute Competitive
Bidding for Number Portability Administration and
to End the NAPM LLC's Interim Role in Number
Portability Administration Contract

WC Docket No. 09-109

The Petition of Telcordia Technologies, Inc. to
Reform Amendment 57 and to Order a Competitive
Bidding Process for Number Portability Administration

WC Docket No. 07-149

Telephone Number Portability

CC Docket No. 95-116

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September 13, 2012

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I. INTRODUCTION AND SUMMARY

Neustar, Inc. (“Neustar”), headquartered in Sterling, Virginia, is pleased to submit these comments addressing the Request for Proposal (“RFP”) materials released by the Wireline Competition Bureau (“Bureau”) on August 13, 2012, for the selection of the entity or entities to serve as Local Number Portability Administrator (“LNPA”) at the conclusion of Neustar’s current contract in 2015.¹ Neustar has provided innovative services as the LNPA since the inception of local number portability (“LNP”) in 1997 and, in doing so, has played a significant role in enabling competition in the telecommunications marketplace as the industry has evolved.

The selection process should serve three fundamental goals. First, the process should ensure that the industry and consumers reap the benefit of robust competition in the information technology sector by subjecting all bidders to the rigors of a competitive bidding process. Second, that process should ensure that the LNPA will continue to meet the critical regulatory requirement of neutrality, ensuring in turn that the LNPA will continue to enjoy the full trust and confidence of all segments of the telecommunications industry that rely on independent and neutral administration of LNP. Third, the process should ensure that the LNPA has the technical and managerial excellence to continue to provide the level of service and innovation that the industry has come to expect.

The RFP process established by the Federal Communications Commission (“Commission”), with important input from state regulators, and implemented by the industry, is generally well designed to achieve those goals; with a limited number of clarifications to the

¹ See Public Notice, *Wireline Competition Bureau Seeks Comment on Procurement Documents for the Local Number Portability (LNP) Administration Contract*, WC Docket Nos. 09-109 & 07-149, CC Docket No. 95-116, DA 12-1333 (FCC rel. Aug. 13, 2012).

*RFP Documents*² the process should go forward as planned without delay. Indeed, to the extent clarification of technical matters is needed, such clarification can and should generally come from the Future of NPAC (“FoNPAC”) subcommittee of the North American Portability Management LLC (“NAPM LLC”) after the final documents are released and the Iasta SmartSource SRM Tool (the “Iasta Tool”) is made available. At that point, potential bidders will have the opportunity to post questions in the online “Forum” that all potential bidders will be able to view. That makes sense: most of the *RFP Documents* reflect the industry’s technical requirements; clarification concerning those matters should therefore be provided by the industry, through FoNPAC, to provide appropriate guidance for bidders. That will also help to avoid delays and to keep the RFP process on track.

The basic policy matters have already been resolved by the Bureau’s decision to authorize the RFP process.³ Furthermore, the *RFP Documents* released for comment reflect careful and laborious consideration by the industry and regulators – and 15 years of experience – concerning the technical and managerial requirements for the LNPA. In light of that, Neustar’s comments are limited to the following areas:

Support for the RFP Design: The *RFP Documents* adhere to the NANC/NAPM Proposal agreed to by the North American Numbering Council (“NANC”) and the NAPM LLC as approved by the Bureau on May 16, 2011.⁴ This process, which provides the proper balance

² The RFP documents include a Vendor Qualification Survey (“VQS”), a Technical Requirements Document (“TRD”), and a Request for Proposal (“RFP”). Hereinafter, these documents will collectively be referred to as the “*RFP Documents*.”

³ See Order, *Petition of Telcordia Technologies Inc. to Reform or Strike Amendment 70, to Institute Competitive Bidding for Number Portability Administration and to End the NAPM LLC’s Interim Role in Number Portability Administration Contract*, 26 FCC Rcd 6839 (WCB 2011).

⁴ See *id.*

between technical and business experience of the NAPM LLC's FoNPAC, with broader involvement from the NANC's Selection Working Group ("SWG") and oversight from the Commission, will ensure that the bidding process will provide the industry and consumers the benefits of robust competition.

Neutrality: The *RFP Documents* properly require, as a condition of participation in the RFP process, that a bidder satisfy strict neutrality requirements. Those requirements are modeled on the Commission's own neutrality rules; the Commission should support the industry's insistence on strict adherence to neutrality requirements.

Evaluation Criteria: The *RFP Documents* appear to identify several important considerations that may not be adequately reflected as Evaluation Criteria; those matters should be clarified in the final *RFP Documents*.

II. THE RFP PROCESS IS PROPERLY STRUCTURED TO ENSURE THAT THE INDUSTRY AND CONSUMERS REAP THE BENEFITS OF COMPETITION

The proposed *RFP Documents* properly reflect the primary role that the industry plays – through the NANC and its SWG, the NAPM LLC and its FoNPAC subcommittee – both in defining the technical requirements for the LNPA and in selecting the vendor or vendors that can best meet those requirements. By employing a competitive bidding process open to any neutral entity in the highly competitive information technology sector, the *RFP Documents* ensure that the industry and consumers will reap the benefits of competition. The Bureau should therefore permit the RFP process to proceed under the supervision of the FoNPAC – as the *RFP Documents* anticipate – making clear that the FoNPAC is free to provide necessary clarifications as the process moves forward while ensuring that all potential bidders are competing on a level playing field.

From the early days of LNP, the Commission determined that the industry, in consultation with state and federal regulators, should be responsible for designing, implementing, and administering the LNP system, subject to Commission oversight.⁵ That structure has facilitated the development of the most efficient and fully functional LNP system in the world, which has in turn enhanced competition in all sectors of the telecommunications industry, with corresponding benefits to consumers. That experience – and the expertise that the industry has built up over the last 15 years – argues strongly in favor of deferring to industry judgments about the requirements and selection criteria for the current RFP process. The *RFP Documents*, moreover, properly implement important Commission policy choices. First, as discussed further below, the detailed neutrality requirements that are a pre-condition for participation in the RFP process reflect longstanding Commission policy, one that is critical to the LNPA's pro-competitive role. Second, the decision to proceed with a competitive bidding process itself reflects the Commission's determination that competition will ensure that the LNPA delivers services with the highest value to the industry. Given that there is substantial competition in the information technology marketplace, with many potentially qualified bidders, the industry and regulators can have confidence that the outcome of the open and transparent RFP process they have created will deliver the benefits of competition to the industry and consumers.

The opportunity for public comment at the outset of the process should confirm the basic soundness of the RFP process and the structure of the *RFP Documents*; it will also provide an opportunity for any necessary elaboration on the basic policy principles underlying the overall approach. By contrast, if specifics on selection criteria or the details of the bidding process require clarification, such clarification can be most efficiently and fairly provided through

⁵ See Second Report and Order, *Telephone Number Portability*, 12 FCC Rcd 12281, ¶ 117 (1997).

questions posted using the Iasta Tool. That procedure will ensure that such potential clarification reflects the expertise of the industry, and any such clarification will be provided to all bidders, with the opportunity for prompt follow-up.

III. THE COMMISSION SHOULD CONTINUE TO ENSURE NEUTRAL ADMINISTRATION OF LOCAL NUMBER PORTABILITY

The *RFP Documents* properly require that any potential bidder establish that it meets stringent neutrality criteria as a prerequisite to consideration of its bid to serve as LNPA. Indeed, neutrality of the LNPA is independently required both by statute and by the Commission's rules.⁶ In the attached white paper, former Commissioner Harold Furchtgott-Roth discusses the essential role of LNP in developing competition in the telecommunications marketplace and the continuing importance of neutrality in LNP administration. Commissioner Furchtgott-Roth, who served on Capitol Hill when the Telecommunications Act of 1996 was being enacted and on the Commission while portions were being implemented, notes that the Commission "explained the importance of neutrality of the administrator in great detail"⁷:

Neutral third party administration of the databases containing carrier routing information will facilitate entry into the communications marketplace by making numbering resources available to new service providers on an efficient basis. It will also facilitate the ability of local service providers to transfer new customers by ensuring open and efficient access for purposes of updating customer records. As we stated above, the ability to transfer customers from one carrier to another, which includes access to the data necessary to perform that transfer, is important to entities that wish to compete in the local telecommunications market. Neutral third party administration of the carrier routing information also ensures the equal treatment of all carriers and avoids any appearance of impropriety or anti-competitive conduct. Such administration facilitates consumers' access to the public switched network by preventing any one carrier from interfering with interconnection to the database(s) or the processing of routing and customer information. Neutral third party administration would thus ensure consistency of

⁶ See 47 U.S.C. § 251(e)(1); 47 C.F.R. § 52.21(k); *id.* § 52.26(a).

⁷ Harold Furchtgott-Roth, *The Importance of Neutrality in Number Portability Administration* 19 (Sept. 13, 2012).

the data and interoperability of number portability facilities, thereby minimizing any anti-competitive impacts.⁸

Neustar has significant experience with neutrality. Not only is Neustar the current LNPA, it is also the North American Numbering Plan Administrator (“NANPA”), the Thousands-Block Pooling Administrator (“PA”), and the Internet-based Telecommunications Relay Service (“iTRS”) Telephone Number Directory Administrator; each role requiring neutrality. From its founding, neutrality has been at Neustar’s core. Indeed, Neustar’s corporate bylaws were written to ensure that it could always be in compliance with the Commission’s rules and regulations governing neutrality, and the “Neu” in its name stands for “neutral.” Given its background and experience with neutrality, Neustar is in a unique position to understand the nuances and extensive corporate-wide procedures that must be implemented by a bidder to ensure its neutrality.

Neustar generally supports the neutrality language included in the *RFP Documents* and strongly supports the industry’s continued commitment to LNPA neutrality. The neutrality provisions are rooted in the statute⁹ and the Commission’s rules,¹⁰ including those that apply to the NANPA and to the PA.¹¹ The inclusion of the NANPA / PA neutrality obligations – which

⁸ First Report and Order and Further Notice of Proposed Rulemaking, *Telephone Number Portability*, 11 FCC Rcd 8352, ¶ 92 (1996) (footnotes omitted).

⁹ 47 U.S.C. § 251(e)(1) requires that the “Commission shall create or designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis.”

¹⁰ The Commission’s rules define the LNPA as “an independent, non-governmental entity, not aligned with any particular telecommunications industry segment.” 47 C.F.R. § 52.21(k).

¹¹ The neutrality provision in the *VQS* and the *RFP* are very similar to the neutrality provisions in the Commission’s rules for NANPA and the PA. Section 52.12(a) of the Commission’s rules requires that the NANPA “shall be [a] non-governmental entit[y] that [is] impartial and not aligned with any particular telecommunication industry segment” and requires the NANPA to comply with specified “neutrality criteria.” 47 C.F.R. § 52.12(a)(1). The specific neutrality criteria include: “(i) The NANPA . . . may not be an affiliate of any telecommunications service

are not otherwise spelled out expressly in the Commission's rules governing the neutrality of the LNPA – in the *RFP Documents* provides important guardrails to ensure that the LNPA is not subject to improper influence that might undermine its ability – both real and perceived – to serve as a trusted neutral third party. The Commission should endorse the industry's determination that the same type of neutrality obligations that the Commission itself insists on for the number administration contracts it administers should apply to the LNPA. The Commission and the industry should ensure that the core neutrality requirements of the *RFP Documents* are not weakened, particularly at the request of any single prospective bidder.¹² The neutrality regime that has been established over the last 15 years by the Commission and the

provider(s) as defined in the Telecommunications Act of 1996, or an affiliate of any interconnected VoIP provider as that term is defined in § 52.21(h)”; “(ii) The NANPA . . . , and any affiliate thereof, may not issue a majority of its debt to, nor may it derive a majority of its revenues from, any telecommunications service provider”; and “(iii) Notwithstanding the neutrality criteria set forth in paragraphs (a)(1) (i) and (ii) of this section, the NANPA . . . may be determined to be or not to be subject to undue influence by parties with a vested interest in the outcome of numbering administration and activities.” *Id.* Similarly, when establishing the PA, the Commission adopted a rule that “the Pooling Administrator shall be a non-governmental entity that is impartial and not aligned with any particular telecommunication industry segment, and shall comply with the same neutrality requirements that the NANPA is subject to under this part.” *Id.* § 52.20(d)(1). The Commission's rules define the LNPA to be an “independent, non-governmental entity, not aligned with any particular telecommunications industry segment,” *id.* § 52.21(k), but the rules do not otherwise directly address the neutrality of the LNPA.

¹² See also Ex Parte Letter from Aaron M. Panner, counsel for Neustar, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket No. 95-116, WC Docket Nos. 07-149 & 09-109 (Sept. 11, 2012), available at <http://apps.fcc.gov/ecfs/document/view?id=7022012062>. Ericsson already has asked the Commission to water down some of the RFP's neutrality requirements because Ericsson, which purchased Telcordia last January, is likely not a neutral third party. As described in detail in Neustar's *ex parte* letter responding to Ericsson's request, Ericsson is plainly aligned with the wireless industry. In addition, as a manufacturer of telecommunications network equipment, Ericsson is subject to undue influence from its service provider customers. Finally, Ericsson has entered into a seven-year, \$5 billion managed services agreement with Sprint pursuant to which it has undertaken day-to-day management of Sprint's network. As part of this agreement, some 6,000 Sprint employees transferred to Ericsson (including some who have numbering responsibilities). *Id.* at 3-4. In addition to Sprint, Ericsson manages some 80 fixed and wireless networks serving 275 million subscribers around the world, and 40% of all mobile traffic goes through Ericsson's networks. *Id.* at 4 n.8.

industry, and which has been adhered to by Neustar during its tenure as LNPA, NANPA, and PA, will lose credibility if a different result is reached.

Additionally, based on its long experience with neutrality, Neustar requests clarification of certain aspects of the neutrality provisions of the *VQS* and the *RFP*. Those include:

- (1) clarifying that the entities included in the definition of “Telecommunications Carrier” are consistent with the class of providers described in section 52.12(a) of the Commission’s rules;
- (2) clarifying that the definition of “affiliate” in the *RFP Documents* is the same as the definition in section 52.12(a); and (3) strengthening the certification requirement for neutrality compliance.

A. The Definition of “Telecommunications Carrier” in the *RFP Documents* Should Be Made Consistent with Section 52.12(a) of the Commission’s Rules

To the extent possible, the terminology used in the *RFP Documents* should be consistent with existing Commission rules; such consistency promotes certainty and ensures that business and regulatory requirements mesh. Reflecting that principle, and as noted above, the neutrality language included in the *VQS* and the *RFP* parallels the neutrality language that applies to the NANPA in section 52.12(a) of the Commission’s rules. There are, however, differences in terminology between the *RFP Documents* and the Commission’s rules that may complicate neutrality compliance and certification. The Commission’s rules, for example, state that the NANPA “may not be an affiliate of *any telecommunications service provider(s)* as defined in the Telecommunications Act of 1996, or *an affiliate of any interconnected VoIP provider* as that term is defined in § 52.21(h).”¹³ The *VQS* and the *RFP* contain similar language for the neutrality of the LNPA, but, rather than using the terms telecommunications service provider

¹³ 47 C.F.R. § 52.12(a)(1)(i) (emphases added).

(“TSP”) or interconnected VoIP provider (“IVP”), those documents use the term “Telecommunications Carrier.”¹⁴

Neustar’s concern with the definition of “Telecommunications Carrier” that is used in the neutrality sections of the *VQS* and the *RFP* is that the class of entities that the definition captures may be broader than the list of entities that file FCC Form 499,¹⁵ which Neustar currently uses as

¹⁴ *VQS* § 3.4; *RFP* § 4.2. Telecommunications Carrier is defined as

an entity that either (i) possesses the requisite authority to engage in the provision to the public of facilities-based wireline local exchange or CMRS telecommunications services in any State or Territory of the United States, or (ii) is one of the following three classes of interconnected Voice over Internet Protocol (“VoIP”) providers: (I) Class 1, a standalone interconnected VoIP provider that obtains numbering resources directly from the North American Numbering Plan Administrator (NANPA) and the Pooling Administrator (PA) and connects directly to the PSTN (i.e., not through a PSTN Telecommunications Carrier partner); or (II) Class 2, an interconnected VoIP provider that partners with a facilities-based Public Switched Telephone Network (PSTN) Telecommunications Carrier to obtain numbering resources and connectivity to the PSTN via the Telecommunications Carrier partner; or (III) Class 3, [a] non-facilities-based reseller of interconnected VoIP services that utilizes the numbering resources and facilities of another interconnected VoIP provider (analogous to the “traditional” PSTN reseller).

Adding to the potential confusion, “Telecommunications Carrier” is also a defined term in the Communications Act of 1934, meaning “any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in section 226 of this title).” 47 U.S.C. §153(51).

¹⁵ The list of Form 499 filers is an important tool to ensure compliance with telecommunications numbering neutrality rules because it is the most comprehensive list of the providers of telecommunications services of which Neustar is aware. The instructions for the 2012 Form 499-A explain that, “[w]ith very limited exceptions, all intrastate, interstate, and international providers of telecommunications in the United States must file this Worksheet. Telecommunications providers that are contributors to any of the support mechanisms, including USF, TRS, NANPA, or LNPA, must file this Worksheet.” The instructions continue by stating that “the term ‘interstate telecommunications’ includes, but is not limited to, the following types of services: wireless telephony, including cellular and personal communications services (PCS); paging and messaging services; dispatch and operator services; mobile radio services; access to interexchange service; special access; wide area telecommunications services (WATS); subscriber toll-free and 900 services; message telephone services (MTS); private line; telex; telegraph; video services; satellite services; resale services; Frame Relay services; asynchronous

a starting point for neutrality compliance. If this is so, a comprehensive list of “Telecommunications Carriers” may not be available. For example, the *VQS* and *RFP* definition states that “Telecommunications Carrier” includes any entity that “possesses the requisite authority to engage in the provision to the public of facilities-based wireline local exchange or CMRS telecommunications services in any State or Territory of the United States.”¹⁶ Neustar is not aware of any available comprehensive list of entities described by the definition and is not certain that one can be created. In some states it can be difficult to obtain an accurate list of the entities that have been authorized to provide facilities-based wireline local exchange service. Neustar is also not aware of a comprehensive list of every entity authorized to provide CMRS telecommunications services. Similarly, if the three types of VoIP service that are included in the definition of “Telecommunications Carrier” create a larger class of prohibited entities than the list of VoIP providers that is captured on the Commission’s Form 499 filer list, Neustar does not know of any comprehensive list of VoIP providers on which those three types would be captured.

We assume that no difference is intended between the entities captured by the Commission’s rule and the entities that the *VQS* and *RFP* are designed to capture. Given the difference in terminology, however, there may be dispute on this point; accordingly, clarification

transfer mode (ATM) services; Multi-Protocol Label Switching (MPLS) services; audio bridging services; and *interconnected VoIP services*.” The instructions also explain that “[a]ll providers of ‘non-interconnected VoIP service’ . . . with interstate end-user revenues subject to TRS contributions must file this Worksheet in order to register with the Commission and report their revenues for purposes of calculating TRS contributions.” *2012 Telecommunications Reporting Worksheet Instructions (FCC Form 499-A)* at 2-3, Approved by OMB 3060-0855 (Mar. 2012), available at <http://www.fcc.gov/document/2012-form-499-instructions> (emphasis added; footnotes omitted). Thus, the list of Form 499 filers includes wireline and wireless telecommunications service providers, interconnected VoIP providers, and even non-interconnected VoIP providers. For that reason, the Form 499 filer list serves as an excellent starting point for determining compliance with neutrality rules.

¹⁶ *VQS* § 3.4; *RFP* § 4.2.

that the *RFP Documents* are intended to be co-extensive with the Commission's rules will assist all bidders.

Neustar's experience demonstrates why clarity on this point is a necessity for potential bidders. Neustar, as the current LNPA, and as the NANPA and PA, is already subject to the Commission's neutrality rules and to the neutrality terms and conditions contained in the NPAC Master Agreements. To ensure compliance with these neutrality requirements, it is often necessary to have and share knowledge of the identity of the entities to which the restrictions apply. Here are three examples:

- 1) Neustar carefully watches the percentage of ownership of its outstanding shares by any entity. An entity that reaches an ownership level of 5% or more is asked to certify that it does not hold a 10% stake in a TSP or IVP. To conduct this review, the investor, however, must know what companies in its portfolio are considered to be TSPs or IVPs.
- 2) Under the Commission's rules, Neustar, as the NANPA and PA, is prohibited from issuing a majority of its debt to any TSP. To ensure that a majority of Neustar's debt will never be held by a TSP, Neustar's finance department checks the Commission's Form 499 filer list before consenting to the issuance of debt.
- 3) Neustar employees are prohibited from owning more than 5% of a TSP or IVP, or from simultaneously working for a TSP or IVP. Neustar's employees need guidance as to what companies are TSPs or IVPs.

In the examples above, Neustar's investors, credit managers, and employees need some method of knowing which companies are TSPs or IVPs so that Neustar can ensure that it is in compliance with the neutrality rules that apply to it. Pursuant to the Neutrality Compliance Plan approved by the Neutrality Committee of Neustar's Board of Directors and filed with the Commission, Neustar uses the Consumer and Governmental Affairs Bureau's "FCC Form 499 Filer Database" website¹⁷ to generate lists, for example, of entities with which Neustar cannot

¹⁷ The "FCC Form 499 Filer Database" website is available at <http://apps.fcc.gov/cgb/form499/499a.cfm>.

affiliate, to which Neustar cannot issue a majority of its debt, and from which Neustar's employees cannot seek part-time employment.

The FoNPAC should accordingly clarify that there is no difference between the definition of "Telecommunications Carrier" in the *VQS* and *RFP* and the terms used by the Commission in section 52.12(a) of its rules. Alternatively, it should be clarified that use of the Commission's Form 499 filer database is a sufficient safe harbor for compliance and certification with the neutrality provisions of the *VQS* and the *RFP*.

B. The Definition of "Affiliate" Used in the *VQS* and *RFP* Should Be Consistent with the Definition of "Affiliate" in Section 52.12(a) of the Commission's Rules

In addition to the potentially differing classes of entities with which the LNPA cannot be affiliated, the *RFP Documents* appear to apply a more restrictive limit on affiliation than the Commission's rules. The difference is not necessary to ensure the neutrality of the LNPA, yet it may significantly affect an LNPA's ability to operate in capital markets. Investors' willingness to commit scarce investment resources is influenced by current neutrality rules because those rules already impose both administrative burdens and limit investors' ability to make or expand investments in certain entities. Expanding the definition of "affiliate" would further restrict investors' flexibility and thus complicate the LNPA's ability to attract significant investment. The FoNPAC should make the affiliation requirement contained in the *RFP Documents* consistent with the Commission's rules.

The Commission's rules applying to the NANPA define "affiliate" as "a person who controls, is controlled by, or is under the direct or indirect common control with another person."¹⁸ The definition continues, in relevant part:

¹⁸ 47 C.F.R. § 52.12(a)(1)(i).

A person shall be deemed to control another if such person possesses, directly or indirectly—

(A) An equity interest . . . in the other person ten (10%) percent or more of the total outstanding equity interests in the other person, or

(B) The power to vote ten (10%) percent or more of the securities . . . having ordinary voting power for the election of directors, general partner, or management of such other person¹⁹

Under this rule, an entity must have an equity interest of 10% or more in a TSP or an IVP, or the power to vote 10% or more of the securities of such a company to be considered an affiliate of a TSP or an IVP.

The definition of “affiliate” in the *RFP Documents* begins with similar language, stating that “an affiliate is an entity that controls, is controlled by, or is under common direct or indirect control with another entity.”²⁰ The definition of what constitutes control, however, is more restrictive. The relevant language from the *RFP Documents* states that

an entity shall be deemed to control another if such entity possesses either directly or indirectly (i) ownership interests . . . of greater than five percent (5%) . . . [or] (ii) voting power . . . of greater than five percent (5%).²¹

Pursuant to this provision, an entity only needs to have an equity interest or voting power of 5% to be considered an affiliate of a “Telecommunications Carrier,” rather than the 10% allowed by the Commission’s rules. In practical terms, this means that an investment fund holding just 5% of an entity that is a Telecommunications Carrier is limited to owning 5% of the LNPA.

To be clear, Neustar’s concern is not with the degree of TSP or IVP *ownership* of the LNPA. The Commission’s *Safe Harbor Order* places a less than 5% limit on an individual TSP, IVP, or their affiliates’ ownership in Neustar as the NANPA and the PA; it makes sense to apply

¹⁹ *Id.*

²⁰ *VQS* § 3.4(1)(c); *RFP* § 4.2(B)(1)(c).

²¹ *Id.*

the same restriction to the LNPA, as the *RFP Documents* do.²² Rather, the issue is with the identity of the *affiliates* of the LNPA's investors. Whereas the Commission's rules allow an entity to hold an interest of less than 10% in a TSP or an IVP without being considered an affiliate, the *RFP Documents* reduce this to 5%. That more stringent limitation could both increase the number of entities that are considered to be affiliates and reduce the LNPA's ability to attract investment. Moreover, experience has shown that the existing limitations are sufficient to ensure neutrality.

Neustar accordingly recommends that the neutrality language of the *RFP Documents* be modified to limit ownership in the LNPA by an affiliate of a Telecommunications Carrier to 5% in *VQS* § 3.4(1)(b) and *RFP* § 4.2(B)(1)(b), and to raise the interest an entity must have in a Telecommunications Carrier before becoming an affiliate to 10% in *VQS* § 3.4(1)(c) and *RFP* § 4.2(B)(1)(c).²³

²² See Order, *North American Numbering Plan Administration; Neustar, Inc., Request to Allow Certain Transactions Without Prior Commission Approval and to Transfer Ownership*, 19 FCC Rcd 16982, ¶¶ 23-25 (2004) (“*Safe Harbor Order*”); 47 C.F.R. § 52.20(d)(1).

²³ This modification is consistent with the current LNPA Master Agreements and the industry's practice with regard to the LNPA. For example, section 1.28 of the current Mid-Atlantic Master Agreement provides that “[t]he term ‘Neutral Third Party’ means an entity which (i) is not a telecommunications carrier as defined in the Communications Act of 1934, as amended; (ii) is not owned by, or does not own, any telecommunications carrier, provided that ownership interests of five percent (5%) or less shall not be considered ownership for purposes of this Agreement; or (iii) is not affiliated, by common ownership or otherwise, with a telecommunications carrier.” Although the term “affiliated” is not defined in the Master Agreements, Neustar and its LNPA auditors have consistently used the Commission's definition of affiliation.

C. The *VQS* and *RFP* Should Require CEO Certifications of Neutrality Compliance in Addition to Legal Opinions

The *VQS* and the *RFP* both underscore the importance of neutrality for LNP administration. Among other things, the *VQS* requires that each prospective vendor submit a legal opinion “to substantiate its neutrality per the criteria set forth in section 3.4” of the *VQS*.²⁴ This legal opinion is “for use in connection with [the] evaluation pursuant to the *RFP*.”²⁵ Likewise, the *RFP* notes that any LNPA selected must undergo a third-party neutrality review every six months and “deliver a legal opinion substantiating the LNPA’s Neutrality during that six month period.”²⁶ Neustar believes that both legal opinions are necessary and an important aspect of a prospective vendor or LNPA confirming its neutrality.

In addition to these legal opinions, Neustar believes that prospective vendors and any LNPA selected should provide certifications from their Chief Executive Officers (“CEOs”) to demonstrate the companies’ commitment to neutrality.²⁷ Neutrality is a significant undertaking for any company. For example, to ensure compliance with the neutrality rules that apply to it as the NANPA, PA, and LNPA, Neustar’s Board of Directors has a Neutrality Committee that meets regularly to review the company’s neutrality status. Neustar also has a Neutrality Officer to whom the directors or employees can seek to have neutrality issues reviewed. Every Neustar director, executive, and employee, no matter where they are located or what their job entails, receives annual neutrality training and is required to provide quarterly neutrality compliance

²⁴ *VQS* § 3.5.

²⁵ *Id.*

²⁶ *RFP* § 4.2.

²⁷ The Commission’s recent *RFP* for the NANPA required bidders to accompany their proposal with a letter from their CEOs certifying that the bidder complied with the neutrality requirements of section 52.12(a). See *RFP*, Solicitation FCC12R0007, Attach. A, § 1.4 (Mar. 20, 2012).

certifications to the Neutrality Officer. Neustar's CEO also provides the Commission with quarterly certifications regarding Neustar's ongoing compliance with neutrality.

Further, neutrality requirements limit who can invest in a company and in whom a company can invest, restrict a company's ability to issue debt, constrain merger and acquisition possibilities, and affect a company's potential lines of business. Compliance with the neutrality Code of Conduct included in the *RFP*²⁸ affects all levels of a company from directors and executives to rank-and-file domestic and international employees. While the legal opinions already required by the *VQS* and *RFP* will demonstrate compliance with the neutrality criteria, only neutrality certifications from a company's CEO can assure the FoNPAC, the NANC, and the Commission that the highest levels of the company understand the requirements of neutrality and are willing to accept those responsibilities.²⁹

IV. THE FoNPAC SHOULD CLARIFY THAT NEUTRALITY IS THE SOLE “GATING FACTOR” FOR PARTICIPATION IN THE *RFP*

The FoNPAC and the SWG have made clear that they will use the *VQS* to prequalify potential vendors before accepting and considering their full proposals. That procedure conserves the time and resources of the FoNPAC and SWG and ensures that a non-neutral bidder does not seek to weaken the neutrality requirements later in the selection process. It is important for the FoNPAC to clarify, however, that the only *gating* factor – that is, the only requirement that should lead to automatic disqualification of a bidder – is non-compliance with the neutrality criteria set forth in the *RFP Documents*.

²⁸ See *RFP* § 4.2.

²⁹ Neustar also notes that, because the *RFP Documents* contemplate that responses will be submitted electronically through the Iasta Tool, it may be appropriate for the FoNPAC to require respondents to submit a separate letter executed by a corporate official with authority to bind the company.

Section 3.6 of the *VQS* directs respondents “to identify which of the following key business terms and conditions that such Respondent as the Primary Vendor, would agree to or not agree to if selected for recommendation as an LNPA to the SWG, by answering ‘Agree’ or ‘Disagree’ to each business term and condition.”³⁰ The clear implication of this language is that a respondent may disagree with one or more of the terms and conditions but still be selected for recommendation as the Primary Vendor. In addition, the fact that the *VQS* requires an indication of agreement or disagreement to 28 separate terms and conditions rather than acceptance of a single term sheet appears to indicate that the FoNPAC did not intend for respondents to agree to each and every term and condition at the risk of disqualification. As discussed below, the responses to the terms and conditions in section 3.6 of the *VQS* can and should be evaluated as part of the bid review.

At the same time, the language of the *VQS* creates ambiguity by identifying “acceptance of key business terms and conditions as a condition for consideration of a Respondent’s responses to the RFP survey.”³¹ As long as a potential bidder is judged to be qualified as a neutral third party, its bid should be considered. In short, consistent with the *RFP Documents*, neutrality is the only item that *should* be considered as a prerequisite to participation in the *RFP* because neutrality is required not only by the terms of the *RFP Documents* but also by the Commission’s rules.³²

³⁰ *VQS* § 3.6.

³¹ *Id.* § 1.1.

³² As noted above, the Commission’s recent NANPA procurement appeared to use a similar process by requiring bidders to submit neutrality compliance certifications from their CEOs at the time their bids were submitted.

V. ADDITIONAL EVALUATION CRITERIA SHOULD BE CONSIDERED DURING THE RFP PROCESS

The Evaluation Criteria set forth in section 14.1.1 of the *RFP* reflect careful consideration by the FoNPAC and SWG. In particular, Neustar believes, consistent with the *RFP Documents*, that a “greatest overall value” approach to selection of the new LNPA contractor will best serve the interests of the telecommunications industry and the public. Neustar also believes that each of the detailed criteria identified by the drafters reflects a consideration important to the selection of the respondent that will provide the greatest overall value, and thus recommends that each of those criteria be retained. That said, Neustar is concerned that other provisions of the *RFP Documents* identify additional important considerations that, while they will presumably be taken into account in vendor selection in keeping with the discussion in the *RFP Documents*, are not explicitly reflected in the current Evaluation Criteria. To assist potential bidders, Neustar thus recommends that those criteria be clarified to confirm that the additional considerations will play an appropriate role in the selection of the LNPA contractor(s). Neustar has five such additional considerations in mind.

First, the *RFP Documents* reflect the critical importance of the LNPA’s status as a Neutral Third Party.³³ Although Neustar believes that NAPM LLC and NANC have appropriately decided to treat neutrality as a mandatory “gating factor” – under which an entity not meeting an articulated standard of neutrality would not be permitted to compete for contract award – Neustar also believes the industry and its customer base would best be served if the industry can further evaluate the degree to which vendors’ proposals will effectuate their neutrality regime(s), above and beyond the neutrality threshold for proposal consideration.

³³ See, e.g., *VQS* § 3.4.

Second, the *RFP Documents* reflect the critical importance to industry and end-customer satisfaction of a smooth and trouble-free transition from the incumbent contractor and its infrastructure and processes to the next-generation contractor and its infrastructure and processes.³⁴ Given this critical importance, Neustar recommends that the Evaluation Criteria be clarified to reflect an explicit consideration of the completeness, robustness, and anticipated efficacy of each respondent's Transition and Implementation Plan and, more importantly, of the level of risk to effective operations and customer satisfaction associated with transition to each respondent and the implementation of its proposed Transition approach.

Third, the *RFP Documents* reflect concern on the part of NAPM LLC and NANC about the potential impact that disparate technologies and processes among different Regional LNPA Contractors might have on service providers.³⁵ The current Evaluation Criteria – particularly the Cost criteria – appear to focus exclusively on the amount of the payments to be made to the LNPA contractor. Neustar recommends that the Evaluation Criteria be clarified to reflect that, in considering a particular respondent's proposal or in determining whether to have a single nationwide LNPA Contractor or multiple Regional Contractors, the evaluators may consider the impact on service providers in terms of the cost to be incurred, the process changes to be required, and the potential for service to be interrupted or degraded.³⁶

Fourth, the *RFP Documents* reflect the critical importance of innovation and technological improvement to effective service delivery and to cost control.³⁷ Neustar

³⁴ See, e.g., *RFP* § 12.3.

³⁵ See, e.g., *id.* § 14.1.

³⁶ See Scott E. Masten, *Scale and Transactional Economies in NPAC Services and the Design of Competitive Bidding Procedures* (Nov. 22, 2011), available at <http://apps.fcc.gov/ecfs/document/view?id=7021748132>.

³⁷ See, e.g., *RFP* § 7.1.

recommends that the Evaluation Criteria be clarified to reflect properly this critical importance. With respect to Factor 1 under Technical Criteria (Operational Performance), Neustar recommends that the criteria be clarified to include a consideration of the respondent's demonstrated understanding of the role of innovation and technological change in the NPAC ecosystem and of particular required or proposed optional innovations that would enhance service in a cost-effective manner. With respect to Factor 2 under Management Criteria (Vendor Experience and Performance), Neustar recommends that the criteria be clarified to include an explicit consideration of each respondent's demonstrated ability to both introduce innovation and manage technological change in a cost-effective manner without adverse impact on service.

Fifth, the *RFP Documents* reflect the importance of the various "Key Business Terms and Conditions" identified in Section 3.6 of the *VQS*. As discussed above, Neustar accordingly recommends that the Evaluation Criteria be clarified to reflect that the evaluators may properly consider whether, and the extent to which, a Respondent satisfies each particular Term and Condition.

VI. CONCLUSION

The Commission should allow the LNPA selection process to move forward expeditiously, with appropriate clarifications to the *RFP Documents* as described above.

Respectfully submitted,

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September 13, 2012